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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,232	10/10/2003	Anne N. Murphy	660088.433C2	1033
500	7590	10/26/2005	EXAMINER	
SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 6300 SEATTLE, WA 98104-7092			WHISENANT, ETHAN C	
			ART UNIT	PAPER NUMBER
			1634	
DATE MAILED: 10/26/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/684,232	MURPHY ET AL.	
	Examiner	Art Unit	
	Ethan Whisenant, Ph.D.	1634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-36,68-71 and 83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 23-36,68-71 and 83 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application (PTO-152) |
| 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) ☐ Other: _____ |

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ELECTION / RESTRICTION

1. The applicant's Preliminary Amendment filed 10 OCT 03 has been entered. Following the entry of the Preliminary Amendment, **Claim(s) 23-36, 68-71 and 83** is/are pending.

SEQUENCE RULES

2. This application complies with the sequence rules and the sequences have been entered by the Scientific and Technical Information Center.

ELECTION/RESTRICTION

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. **Claims 23-36** drawn to a host cell for identifying agents that alter mitochondrial permeability transition, classified in Class 435, subclass 325.
 - II. **Claims 68-71** drawn to a method for preparing a mitochondrial permeability transition pore component polypeptide fused to an energy transfer molecule, classified in Class 435, subclass 41.
 - III. **Claim 83** drawn to a kit comprising isolated cyclophilin D polypeptide or a derivative thereof; an isolated adenine nucleotide translocator polypeptide or a derivative thereof; and a detection reagent that specifically binds to at least one of the foregoing, classified in Class 435, subclass 4.
4. The inventions are distinct, each from the other for the following reasons.

Inventions I and II are drawn to patentably distinct product (i.e. Group I) and method (i.e. Group II). Most importantly note that the host cell of Group I must comprise "a second nucleic acid expression

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construct, comprising a promoter operably linked to a polynucleotide encoding a cyclophilin polypeptide fused to a polynucleotide encoding a second energy transfer molecule or a variant thereof, wherein binding of the mitochondrial permeability transition pore component polypeptide to the cyclophilin polypeptide results in detectable energy transfer between the first and second energy transfer molecules." This second nucleic acid expression construct need not be present in the host cell used in the method of Group II.

Inventions I and III are drawn to patentably distinct products with distinct structural limitations.

Inventions II and III are drawn to patentably distinct method (i.e. Group I) and product (i.e. Group III). Most importantly note that the kit of Group III must comprise "an isolated cyclophilin D polypeptide or a derivative thereof; an isolated adenine nucleotide translocator polypeptide or a derivative thereof; and a detection reagent that specifically binds to at least one of the foregoing," whereas the method of Group II is drawn to method for preparing a mitochondrial permeability transition pore component polypeptide fused to an energy transfer molecule. The two groups constitute independent patentably distinct methods.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and the necessity for non-coextensive literature search, restriction for examination purposes as indicated is proper.

6. The examiner attempted but failed, on 15 OCT 05, to obtain an election to the above restriction requirement via telephone. The applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

CONCLUSION

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ethan Whisenant, Ph.D. whose telephone number is (571) 272-0754. The examiner can normally be reached Monday-Friday from 8:30AM -5:30PM EST or any time via voice mail. If repeated attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached at (571) 272-0745.

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The Central Fax number for the USPTO is (571) 273-8300. Before faxing any papers, please inform the examiner to avoid lost papers. Please note that the faxing of papers must conform with the Notice to Comply published in the Official Gazette, 1096 OG 30 (November 15, 1989).



ETHAN WHISENANT
PRIMARY EXAMINER
Art Unit 1634